

IMMEDIATE RELEASE

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This case involved an agreement entered into between Ms. Traska and CNA HealthPro and Valley View concerning the staff negligence which caused Ms. Traska's mother, Hester McColm, to fall, increasing the mother's medical expenses. Ms. McColm fell during her stay at a rest home and as a result Ms. Traska and Ms. McColm agreed with Valley View's insurer, CNA, that it would pay anything in excess of \$1190 each

month for Ms. McColm's increased medical expenses. In this 1997 agreement, Ms. McColm agreed not to file a lawsuit as long as the payments continued.

In June, 1998, CNA again stopped paying those medical expenses. Ms. Traska contacted Baker, who was representing her on an unrelated matter, to review with CNA why they stopped the payments. Upon Traska's request, Baker contacted CNA to discuss the situation and he confirmed the previous agreement. The payments continued.

Because the statute of limitations was about to run on the negligence action, Traska contacted Baker to institute a lawsuit against CNA and Valley View. Baker declined because he would have to be a witness concerning the original agreement. Baker referred her to another attorney.

In July of 2000, Ms. McColm pursued an action against Valley View for negligence. In about a month, Ms. McColm died and Ms. Traska became the personal representative of Ms. McColm's estate and continued the lawsuit.

The district court granted summary judgment in favor of Valley View because Traska had offered no admissible evidence of consideration supporting the agreement between her mother and CNA. This decision was appealed and the Idaho Supreme Court vacated that finding and remanded for further proceedings finding genuine issues of material fact regarding the existence of a consideration for the settlement agreement.

Next, Ms. Traska as McColm's personal representative filed this lawsuit against Baker alleging he had committed professional negligence by failing to memorialize the settlement agreement between McColm and CNA and by failing to file a lawsuit against CNA. Baker filed a motion for summary judgment. The district court dismissed the malpractice action for failure to memorialize the settlement agreement because "there had been no adverse ruling on the underlying claim and the claim (against CNA) could be pursued as" a result of the Idaho Supreme Court's previous ruling.

In an opinion released today, the Idaho Supreme Court upheld the district court's dismissal of the complaint against Baker because the Court found there were no duties owed to Traska that were breached by Baker. Specifically, the Court found oral settlement agreements do not have to be reduced to writing to be enforceable. Although the Court commented that the better practice would have been to send a confirming letter to CNA, there was no duty owed to memorialize the agreement which Baker had reaffirmed with CNA. The Court also ruled that Traska did not explicitly instruct Baker to memorialize the oral agreement when she met with him in June of 1998.

The Court also ruled that because Traska's claim for legal malpractice has not shown that she suffered some damage from a lack of a memorialized agreement, the case should be dismissed. The necessity of hiring an attorney to enforce the oral settlement agreement is not due to Baker's actions but is attributable to CNA and their breaching of their underlying oral agreement with Traska.